

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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R 181404Z DEC 74

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 6186

INFO AMCONSUL CALI

AMCONSUL MEDELLIN

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E.O. 11652: NA

TAGS: EAIR, CO

SUBJECT: CIVAIR-GOC FUEL TAXES AND VOLUME DISCOUNTS TO AVIANCA

REF: STATE 233905

1) FOLLOWING IS INFORMAL TRANSLATION OF FOREIGN MINISTRY
NOTE NO 7558 OF DEC 10, 1974, RESPONDING TO THE EMBASSY'S
NOTE (BASED ON REFTEL) REGARDING TAXES ON AVIATION FUEL AND
DISCRIMINATORY PRICING: QUOTE: THE MINISTRY OF FOREIGN
RELATIONS PRESENTS ITS COMPLIMENTS TO THE CHARGE D'AFFAIRS
OF THE EMBASSY OF THE UNITED STATES OF AMERICA IN BOGOTA AND
REFERS TO THE EMBASSY'S NOTE NO 119 OF NOVEMBER 8, 1974,
PERSISTING IN THE ARGUMENTS PRESENTED IN NOTE NO 713 OF
JULY 11, 1974, REGARDING THE DISCOUNT THAT AVIANCA ENJOYS
IN COLOMBIA ON THE PRICE OF JET FUEL THAT IT CONSUMES IN
ITS INTERNATIONAL OPERATIONS AND WHICH THE EMBASSY CONSIDERS
DISCRIMINATORY IN THAT THE SAME DISCOUNT IS NOT GRANTED
TO UNITED STATES AIRLINES OPERATING IN COLOMBIA. THIS
SUBJECT HAD ALREADY BEEN ADDRESSED BY THE MINISTRY IN ITS
NOTE NO 4782 OF AUGUST 8, 1974, IN WHICH IT WAS AFFIRMED
THAT THE DISCOUNT IS NOT DISCRIMINATORY NOR DOES IT CONTRAVENE
ANY OF THE STANDARDS OF THE AIR AGREEMENT BETWEEN THE UNITED
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STATES AND COLOMBIA.

THE EMBASSY ALSO RAISES, FOR THE FIRST TIME, THE PROBLEM OF THE COLOMBIAN SALES TAX ON AVIATION FUEL, FROM WHICH THE NORTH AMERICAN COMPANIES HAVE NOT BEEN EXEMPT UNTIL NOW, IN SPITE OF THE TERMS OF THE BILATERAL AGREEMENT. EVIDENTLY, A NEW SUBJECT WHICH HAS NO RELATIONSHIP WITH THE PREVIOUS SUBJECT IS BEING RAISED AND THE MINISTRY WILL COMMENT ON IT SEPARATELY.

AS REGARDS THE PROBLEM OF DISCRIMINATION, THE EMBASSY STATES THAT ECOPETROL IS THE ONLY AUTHORIZED DISTRIBUTOR OF AVIATION FUEL FOR INTERNATIONAL FLIGHTS AND FROM THIS FACT CONCLUDES THAT IT IS AN OFFICIAL MONOPOLY, WITHOUT EQUAL IN THE UNITED STATES, IN ORDER TO AFFIRM THAT THE DISCOUNT GRANTED TO AVIANCA "FOR NO APPARENT COMMERCIAL REASON" SUGGESTS DISCRIMINATORY PRACTICES. WITH REGARD TO THIS PARTICULAR OBSERVATION, THE MINISTRY PERMITS ITSELF TO NOTE THAT WITHIN THE UNIQUE DIFFERENCES OF EACH COUNTRY INHERANT IN ITS OWN SOVEREIGNTY, THE ORGANIZATION OF THE PETROLEUM INDUSTRY IN COLOMBIA HAS CHARACTERISTICS WHICH FOR NO REASON SHOULD BE COPIED FROM OR INSPIRED BY THOSE THAT THE UNITED STATES HAS ADOPTED IN ITS OWN TERRITORY. IN EFFECT, ECOPETROL HAS TODAY, BY VIRTUE OF THE POLICY FOLLOWED BY THE NATIONAL GOVERNMENT IN THIS MATTER, NEARLY TOTAL CONTROL OF REFINERY CAPACITY, BUT DISTRIBUTION HAS BEEN LEFT IN THE HANDS OF PRIVATE COMPANIES AMONG WHICH, AND NOT OF THE LEAST IMPORTANCE, ARE ESSO AND TEXACO, TWO NORTH AMERICAN COMPANIES. MOREOVER, FOR REASONS ATTRIBUTABLE TO THE WORLD ENERGY CRISIS, THE COLOMBIAN GOVERNMENT IS EXERCISING STRICT CONTROL OVER DISTRIBUTION AND PRICES TO CONSUMERS, WHICH IS AN ALMOST UNIVERSAL PRACTICE. THE FACT THAT THE UNITED STATES FOR ITS OWN REASONS MAY HADVE ADOPTED OR MAY WISH TO ADOPT DIFFERENT PROCEDURES CANNOT BY ITSELF RESULT IN A CONCLUSION THAT DISCRIMINATORY PRACTICES EXIST. ON THE OTHER HAND, THE MINISTRY HOPES THAT THE EMBASSY UNDERSTANDS THAT FUEL PRICES AND THE MANNER IN WHICH FUEL IS DISTRIBUTED ARE MATTERS THAT OBVIOUSLY, GIVEN THE ACTUAL CIRCUMSTANCES, SHOULD BE UNDER THE DIRECT CONTROL OF THE GOVERNMENT. THEREFORE THE MINISTRY WOULD BE MOST APPRECIATIVE IF THESE ASPECTS OF THE NATIONAL PETROLEUM POLICY WERE NOT LIMITED OFFICIAL USE

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TO BE THE OBJECT OF DISCUSSION BETWEEN THE TWO GOVERNMENTS NOR TAKEN AS A PRETEXT FOR CONCLUSIONS WHICH IN THE OPINION OF THE MINISTRY ARE TOTALLY IN ERROR.

WITH REGARD TO "NO APPARENT COMMERCIAL REASON" FOR THE DISCOUNT GRANTED AVIANCA SUFFICE IT TO SAY THAT AVIANCA AND ITS AFFILIATED COMPANIES CONSUME THE GREAT MAJORITY OF THE JET FUEL DISTRIBUTED IN COLOMBIA.

PREVIOUSLY, WHEN FUEL DISTRIBUTION WAS NOT SUBJECT TO GOVERNMENT CONTROL AND THERE DID NOT EXIST STRICT CONTROL OF FUEL PRICES, AVIANCA OBTAINED A DISCOUNT FROM ESSO LINKED TO THE HIGH VOLUME OF PURCHASES UNDERTAKEN IN THE COUNTRY, AND WHEN BECAUSE OF THE ENERGY CRISIS THE GOVERNMENT BEGAN TO CONTROL THESE ASPECTS OF THE PETROLEUM INDUSTRY, IT WAS ONLY NATURAL THAT THIS DISCOUNT BE CONTINUED IN ONE FORM OR ANOTHER. THEREFORE THE MINISTRY WOULD BE GRATEFUL FOR NO FURTHER DISCUSSION OF THE REASONS FOR THIS DISCOUNT SINCE IT IS A PURELY INTERNAL MATTER, SIMILAR TO THE DISCOUNTS THE UNITED STATES COMPANIES OBTAIN IN THEIR OWN COUNTRY ON ACCOUNT OF THE VOLUME OF PURCHASES OR FOR OTHER REASONS WHICH MAY NOT HAVE COME TO THE ATTENTION OF THE COLOMBIA GOVERNMENT.

SIMPLY STATED, THE PROBLEM IS THAT AVIANCA IN FACT HAS A SPECIAL PRICE FOR JET FUEL FOR INTERNATIONAL OPERATIONS WHICH IS NOT ENJOYED BY THE UNITED STATES COMPANIES WHILE THE UNITED STATES COMPANIES IN FACT HAVE IN THE UNITED STATES SPECIAL PRICES WHICH ARE NOT ENJOYED BY AVIANCA. AS REGARDS THIS MATTER, THE MINISTRY MAINTAINS ITS POSITION THAT ARTICLES 7 AND 8 OF THE BILATERAL AVIATION AGREEMENT ARE NOT APPLICABLE, BUT THE MATTER COULD BE STUDIED UNDER THE PROVISIONS OF THE AGREEMENT FOR THE SETTLEMENT OF DISPUTES.

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DOT-00 INR-05 NSAE-00 RSC-01 FAA-00 L-02 SS-15 NSC-05

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R 181404Z DEC 74

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 6187

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TURNING NOW TO THE QUESTION OF SALES TAXES PAID BY THE US COMPANIES IN COLOMBIA, THE MINISTRY IS AWARE THAT JET FUEL IS TAXED AT A RATE OF FOUR PERCENT, NOT ON THE SALE PRICE TO THE PUBLIC, BUT ON THE SALE PRICE AT THE REFINERY IN BARRANCABERIEJA, FOR WHICH REASON IT MAY BE DIFFICULT TO DETERMINE THE AMOUNT OF THE TAX ON INDIVIDUAL BILLS SINCE IT IS INCLUDED IN THE PRICE AND NOT LISTED SEPARATELY. NEVERTHELESS, IT IS CLEAR THAT THAT PART OF THE PRICE WHICH CORRESPONDS TO THE SALES TAX CAN BE DETERMINED EXACTLY. ALL COMPANIES IN COLOMBIA, DOMESTIC AS WELL AS FOREIGN, PAY THIS TAX AND THERE WOULD THEREFORE BE NO REASON TO DESCRIBE THIS AS DISCRIMINATION. THE MIN HAS BEEN INFORMED THAT AT LEAST ONE US COMPANY HAS PETITIONED THE MINISTRY FOR AN EXEMPTION FROM THE TAX, SO FAR WITHOUT POSITIVE RESULTS. THE MIN DOES NOT KNOW IF THE FAILURE OF THIS REQUEST IS DUE TO THE FACT THAT THE COMPANIES HAVE NOT PRESENTED THE PROBLEM ADEQUATELY OR HAVE NOT UNDERTAKEN ALL OF THE NECESSARY STEPS IN ACCORDANCE WITH INTERNAL COLOMBIAN REGS, BUT IN ANY EVENT THE MIN UNDERSTANDS PERFECTLY THAT IT IS TOTALLY ABNORMAL FOR US COMPANIES TO CONTINUE PAYING THIS TAX, WHICH IS CONTRARY TO THE BILATERAL AVIATION AGREEMENT, AND FOR THIS REASON AND AS A DEMONSTRATION OF GOOD FAITH THE MIN FORM RELATIONS WILL INTERCEDE WITH THE MINISTRY FOR AN IMMEDIATE AND FAVORABLE RESOLUTION OF THE ISSUE.

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A TOTALLY DISTINCT MATTER IS THE STATEMENT FOUND IN THE EMB'S NOTE TO THE EFFECT THAT IF THIS EXEMPTION IS NOT GRANTED IMMEDIATELY RETALIATORY MEASURES MAY BE APPLIED TO AVIANCA. THE MIN UNDERSTANDS THAT THIS STATEMENT MAY BE DERIVED FROM A LACK OF KNOWLEDGE REGARDING CERTAIN ASPECTS OF AVIANCA'S SITUATION IN THE US AND NATURALLY REPLIES TO THE EFFECT THAT ANY MEASURE TAKEN AGAINST THE COLOMBIAN CO WILL RESULT IN EQUIVALENT MEASURES IMMEDIATELY BEING TAKEN AGAINST THE US COMPANIES IN COLOMBIA.

ACCORDING TO INFO AVAILABLE TO THE MIN, THE SYSTEM OF EXEMPTIONS IN FAVOR OF AVIATION COMPANIES OPERATING TO THE US IS BASED EXCLUSIVELY ON THE FACT THAT FUEL FROM FOREIGN SOURCES IS IMPORTED AND STORED UNDER CONTROL OF THE CUSTOMS AND FOR THIS REASON IS TAX EXEMPT. UNTIL THE ENERGY CRISIS, FOREIGN COMPANIES OPERATING TO AND FROM THE US HAD ACCESS TO DUTY FREE FUEL ONLY BECAUSE OF THE FUEL IMPORTATIONS BEING MADE UNDER BOND, BUT THESE COMPANIES DID NOT HAVE RECOURSE TO THE FUEL AVAILABLE FOR DOMESTIC USE IN THE US WHICH IS SUBJECT TO TAXES. BECAUSE OF THE ENERGY CRISIS AND PRECISELY BY VIRTUE OF THE VERY STRICT REGS TO WHICH FOREIGN AIRLINES ARE SUBJECTED IN THE US, THE AIRLINES OBTAINED ACCESS TO FUEL FOR DOMESTIC USE WHICH IS SUBJECT TO SALES TAXES. AT PRESENT, ACCORDING TO INFO AVAILABLE TO THE MIN, AVIANCA HAS ACCESS TO DOMESTIC FUEL, SUBJECT TO TAXES, AND UNTIL NOW IT HAS NOT BEEN POSSIBLE

TO DEVELOP A PROCEDURE BY WHICH, PRECISELY IN ACCORD WITH THE STANDARDS INVOKED BY THE EMB IN THIS CASE, AVIANCA IS EXEMPTED FROM PAYING TAXES ON FUEL UPLIFTED IN THE US.

THEREFORE THE SITUATION MIGHT IN A CERTAIN SENSE BE EQUIVALENT IN THAT THE COLOMBIAN COMPANIES UPLIFTING FUEL IN THE US HAVE NOT BEEN EXEMPTED FROM TAXES WHICH THEY ARE PAYING IN THE NORMAL FASHION. THEREFORE THE MIN WOULD BE GRATEFUL IF THE GOVT OF THE US COULD DEFINE THE EXTENT TO WHICH COLOMBIAN COMPANIES CURRENTLY UPLIFTING FUEL FOR DOMESTIC USE, SUCH AS AVIANCA, HAVE THE RIGHT TO AN EXEMPTION. AS THE EMB WILL SEE FROM THE FOREGOING CONSIDERATIONS, THE FUEL QUESTION CANNOT BE RESOLVED SIMPLY ON THE BASIS OF CLAIMS OF DISCRIMINATION OR OF EVENTUAL RETALIATION, AND FOR THIS REASON THE MIN EARNESTLY DESIRES THAT THE MATTER BE ELEVATED TO A LEVEL OF GREATER UNDERSTANDING AND JUDGMENT AS SHOULD BE NATURAL AND LOGICAL GIVEN THE EXCELLENT RELATIONS CURRENTLY EXISTING BETWEEN THE TWO GOVTS. IF THIS WERE THE INCLINATION OF THE US

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GOVT, THE MIN WOULD DESIRE THAT ALL OF THESE PROBLEMS BE RESOLVED BY MEANS OF A JOINT EFFORT TO ESTABLISH EXPEDITIOUS SYSTEMS WHICH MIGHT HONOR THE MUTUAL EXEMPTION FROM TAXES TO WHICH THE BILATERAL AIR AGREEMENT REFERS.

THE MINFORN RELATIONS AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE CHARGE D'AFFAIRES OF THE EMBASSY OF THE UNITED STATES OF AMERICA THE ASSURANCES OF ITS HIGH CONSIDERATION. END QUOTE.

2) IT IS IMPORTANT TO NOTE THAT THE MINISTRY

A) SUGGESTIONS THAT THE PRICE QUESTION CAN BE STUDIED UNDER THE PROVISIONS OF THE BILATERAL AVIATION AGREEMENT FOR THE SETTLEMENT OF DISPUTES;

B) AGREE TO MAKE REPRESENTATIONS BEFORE THE MINISTRY OF FINANCE FOR AN IMMEDIATE AND FAVORABLE RESOLUTION OF THE TAX ISSUE; AND

;) REQUESTS COMMENTS ON THE EXTENT TO WHICH COLOMBIAN AVIATION COMPANIES HAVE THE RIGHT TO TAX EXEMPTIONS IN THE U.S.

3) ACTION REQUESTED. DEPARTMENT'S COMMENTS AND GUIDANCE ON THE POINTS RAISED IN PARA 2. END ACTION REQUESTED. VAKY

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